

1 Gerald VonTobel
 2 PO Box 7000
 3 Carson City, Nevada 89702
 4 Northern Nevada Correctional Center
 5 Inmate No. 86814

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 7 United States District Court
 8 District of Nevada
 9

10 Gerald VonTobel
 11 plaintiff,
 12 Vs
 13 State of Nevada et al,
 14 Ms Marsha Johns, et al,
 15 defendants.

Case No 3:17-cv-00022-RCJ-CLB

Motion For Leave to file

a request for sanctions

against the State of

Nevada et al, Medical

Staff at NNCC, for non-

compliance of Settlement

Agreement, Failure to

Provide ordered treatment, 42 USC § 1983, 8th Amend-

ment failure to protect. Introduction Demand for Jury Trial

16 Also, Ms. Milisa Mitchell
 17 Nurses Kathy and Keenen.
 18 Provide ordered treatment, 42 USC § 1983, 8th Amend-
 19 ment failure to protect. Introduction Demand for Jury Trial
 20 i) Come Now, Plaintiff, Mr Gerald VonTobel, a "pro se"
 21 litigant files this Motion for sanctions, due to deny
 22 and delay of medical treatment per settlement
 23 agreement.

24 2) Plaintiff, alleges "Retaliation", "Delay and Denial", "Breach
 25 of agreement", "Cruel and Unusual Punishment", "Tort
 26 of Negligence", "Deprivation", "Committed by persons
 27 acting under the color of State Law, including
 28 "Deliberate Indifference"

Jurisdiction

3) The US District Court has jurisdiction over violations of Constitutional Rights, Laws, and review.

The Court has ultimate control of supplemental jurisdiction pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 1331 and 1343.

4) Plaintiff, seeks a declaratory judgment pursuant to 28 U.S.C. § 2201, and further, plaintiff has under-standing under 42 U.S.C. allegations is appropriate to bring under Venue 28 U.S.C. 1391(b)(2) because a substantial part of the events or omissions give rise to the claim did occur in the district.

5) The court also holds the power over review under rule 12(b)(6) (see) Chappel V. Lab Corp of America, 232, F3d, 719, 723 (9th cir 2000)

6) Plaintiff, submits this complaint should not be dismissed for failure to state a claim (see) Morley V. Walker, 175, F3d, 756, 759 (9th cir 1999) as the court has an obligation to make a determination that all allegation as true, and therefore, construe them in the most light possible in favor of the plaintiff (see) Warsaw V. Xoma Corp. 74, F3d, 955, 957 (9th cir 1996)

7) The plaintiff respectfully request the court afford plaintiff's complaint in a less stringent standard then pleadings which are drafted by lawyers (see) Hughes V. Rowe, 449, U.S., 5, 9, (1980).

8) The plaintiff also request the court allow for grammar and spelling errors as plaintiff lacks a formal education,
(2)

1 and is mediated which effects plaintiff's abilities.

2 9) The court will find during discovery that all
3 allegations have been well documented, supported
4 by facts, to be true and tangible. That they are
5 plausible, and therefore respectfully request the
6 court rely on its common sense in determining
7 whether the complaint gives rise to the element
8 level for the relief requested.

9 10) Plaintiff, will in this complaint address arguable
10 basis of both fact and law, as well as constitutional
11 violation issues, which should allow the court to
12 determine whether or not the defendants are
13 immune from litigation. As those actors did ~~act~~
14 under the color of State Law, and did promulgate
15 unjust Cruel and Unusual Punishment upon plaintiff
16 and cause the "Tort of Negligence" (see) *Netzke v. Williams*
17 490, US, 391, 327-28 (1989) where plaintiff may have
18 had delusional scenarios, which is not the case in
19 this complaint, as the physical evidence will prove.

20 11) Plaintiff, has the right to access the federal courts
21 when presenting violations of Constitutional issues
22 (see) *Shapley v. Nevada Bar, 766, F2d, 404, 407 (9th Cir 1985)*

23 12) This complaint is liberally constructed as to State claim
24 for relief (see) *Balisteri v. Pacific Police Dept., 901, F2d, 1016,*
25 *699 (9th Cir 1990).*

26 13) This complaint alleges two essential elements 1)
27 The violations of rights secured under the United States
28 Constitution and/or Federal Laws, and State Laws of Nevada.

14) Retaliation; This plaintiff alleges staff have re-taliated by, moving plaintiff from Love Lock State Prison to Northern Nevada State Prison within a month of signing the settlement agreement. When plaintiff argued to remain at LCC.

(see) Stanley V. Litscher F3d 340, 343 (7th Cir 2000) were inmate stated claim for retaliatory transfer even though transfer did not involve liberty interest; Also (see) Babcock V. White, 102 F.3d at 275, were (claim that official delayed inmate's transfer was actionable "even if (the official's) actions did not independently violate the Constitution") Notwithstanding, the fact that once at NNC plaintiff pain medication were "stopped completely." Which caused "Pain and Suffering", "Cruel and Unusual Punishment" and "Deprivation"

15) The First Amendment prohibits such retaliation against inmates who report complaints, file grievances, or file lawsuits. (see) Thaddeus-X V. Blatter, 175 F3d 378, 394, 398 (6th Cir 1999) (en banc) (elements of retaliation claims are: was (1) engaged in protected conduct; (2) that he suffered an adverse action; (3) that a causal connection exist between the protected conduct and the adverse action, and (4) it deterred a person of ordinary fairness from exercising his right to access the courts); Which on 2/6/23 Mr Van Toel did not get to hear from the Court and A.G. as scheduled.

16) Denial and Delay: Mr. VanTobel has been denied his treatment (hand surgery) for over 4 years which now the appointment of 2/6/23, was vacated/canceled due to a conflict of appointments, the telephonic hearing with the courts 2/6/23 and the hand specialist 2/6/23 (note: Neither appointment was honored.) Now, it leaves plaintiff awaiting another long period of time to get a hand surgeon to see him, thus, "Delay Again". Plaintiff, alleges that the move to schedule both appointments on 2/6/23 was "deliberate indifference" to his care.

This was a deliberate act to continue punishment upon plaintiff (see) *Archer v. Dutcher*, 733 F.2d 14, 17, (2nd Cir 1984) and (see) *Flowers v. Bennett*, 123 F Supp. 2d 595, 600-01 (ND, Ala 2000) And (see) *Estelle v. Gamble*, 429 US, at 105-06; An official acts with "Deliberate Indifference" when that official intentionally delays providing an inmate with access to medical treatment, knowing that the condition would be exacerbated by that delay. (see) *Oxendine v. Kaplan*, 241 F3d 1272, 1278-79 (10th Cir 2001) (holding that prison officials showed "Deliberate Indifference" when they delayed the "specialized treatment" of plaintiff's fingers.

17) This is a serious medical need, and has caused continued wanton infliction of pain unnecessary, have failed to approve shoes by warden, Nursing Staff have refused the eye glass prescription claiming it's too old (more than a year) but it's not.

18) Deliberate Indifference: The staff at UNCC have acted with "malicious and sadistic" and "evil" intent repeatedly, with also the "state of mind" in doing so.

Those officials knew and/or should have known about a serious danger of additional pain and suffering of Mr. Vontobel's continued pain, yet showed "unconcerned, uncaring" to that danger. Thus, posed a provsive danger to his health and well-being, caused added mental "stress", and "deprivation". It was inadequate care, has been through-out the medical care process, even in the eye's of a court order, and/or settlement agreement.

A) Those officials clearly had advanced notice of the pain in which would continue if the fingers (surgery) went untreated. (see) Farmer v. Brennan and/or Estelle v. Gamble. Both site defendant's should have known the risk of harm, not to treat would cause plaintiff.

20) "Deliberate Indifference", is satisfied by something less than acts or omissions for the very purpose of causing harm or with pain, the very fact that overall Vontobel has waited 4 years for the treatment to correct the fingers, and it has hapered every aspect of life, from showering, eating, writing. It has been made known to staff.

1 2) Tort of Negligence; Tort Law = "wrong or in-
 2 jury, in this complaint of failure to abide
 3 by the settlement agreement, both are pre-
 4 sent (1) The staff and the prison/state have
 5 wronged plaintiff by the failure to cure the
 6 ongoing pain and suffering caused by delay
 7 and denial of medical treatment, simply
 8 put, failed to follow their own applied agree-
 9 ment. (2) Thus, has caused further wanton
 10 pain and suffering, by that failure, and
 11 they are well aware (see) Numerous medical
 12 request.

13 2) Those basic human rights to access to
 14 medical treatment proscribed by doctors,
 15 has gone untreated long enough, and the
 16 court should take action against those
 17 responsible including but not limited to
 18 the State of Nevada et al, Medical Staff and
 19 the prison authorities; according to Inter-
 20 national Human Rights Laws (see) Also, Tafoya
 21 V. Salazar, 516 F3d 912, 916-17 (10th Cir 2008)
 22 "a jury permitted to infer that the prison officials
 23 had actual knowledge of the constitutionally
 24 infirm condition based solely on circumstantial
 25 evidence, such as the obviousness of the
 26 condition." And, that the risk is so obvious
 27 even a non-medical lay person could see
 28 the risk of harm (Additional pain and suffering)

23) Failure to Respond Reasonably; This prison is not run-well, prison staff don't take the necessary measures to respond to the inmates medical care, that is well founded (see) All the Law Suits filed by inmates.

24) The staff make no good-faith effort to resolve inhumane conditions, like the pain and suffering of injured inmates. "once the condition is known to medical staff, steps should be taken to avoid further injury, they simply cannot ~~ing~~ ignore the issue, but should take the corrective action prescribed/ordered and agreed upon by plaintiff, defendants and the court. (see) Williams v. Griffin, 952 F2d 820, 826 (4th cir 1991)

25) The State has ignored the courts authority, and the jurisdictional authority of 28 U.S.C. § 1331 and 28 U.S.C. § 1343 (a)(3), and 28 U.S.C. § 1367 (a) by not complying with the approved Settlement of the Federal Court.

26) This plaintiff exhausted all available remedies available, yet still no care. What more can this plaintiff do if the Courts can't make the defendants responsible?

Parties

Plaintiff, Gerald VanTobel, files as a "pro se" litigant, his address is PO Box 7000 Carson City Nevada 89702, Northern Nevada Correctional Center.

Defendants, Attorney General, Mr. Gregory L. Zunino
The Medical Staff and Doctors at NNCC, Ms.
Malisa Mitchell, Nurse Kathy, Nurse Keenen.

Relief Requested

Wherein plaintiff reincorporates all issues stated in this complaint herein inclusively, and in full length, and force as first claim for relief wherefore plaintiff respectfully request the court find in favor of the plaintiff and grant the following relief;

A) Issue a declaratory judgment stating in part, the plaintiff's constitutional rights have been violated by defendants, and grant the following;

B) Compensatory damages in the amount of \$100.⁰⁰ One Hundred Dollars for every day which has passed, and will pass before the State, Prison, and staff comply with the agreement signed by the AG, Plaintiff, and the Court.

1 c) Punitive Damages for continued
2 pain and suffering in the amount of \$5,000.⁰⁰
3 five Thousand Dollars.
4

5 That the court award any and all
6 other amounts which the court may be
7 entitled too.
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9 Respectfully, Submitted this 8th
10 day of Feb 2023.
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12 * Gerald Vontobel
13 Gerald Vontobel.
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